

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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COMMUNICATIONS SECTION  
SEP 10 1996

In the Matter of )  
 )  
Guidelines for Evaluating the Environmental )  
Effects of Radiofrequency Radiation )

ET Docket No. 93-62

To: The Commission

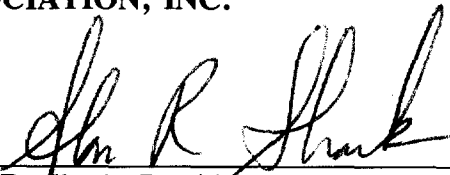
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PETITION FOR RECONSIDERATION

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By:



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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of one aspect of the Commission's August 1, 1996 Report and Order in the above-identified proceeding.<sup>1</sup> The Association urges the FCC to refine the definition of "covered SMR" referenced in FCC Rule Section 2.1093(c) adopted herein to reflect more accurately the policy objectives articulated in the Order.

## **I. INTRODUCTION.**

1. In this proceeding, the Commission has considered appropriate guidelines and methods for evaluating the environmental effects of radiofrequency (RF) radiation from FCC-regulated transmitters. The instant Order incorporates the recommendations of various government agencies charged with responsibility for matters relating to the public safety and health, and represents the FCC's effort to adopt rules that will protect the public and workers from exposure to potentially harmful RF fields. Order at ¶ 1.

2. Among other matters, the Commission has determined to adopt guidelines regarding exposure criteria for portable and mobile devices. In doing so, it has endeavored to distinguish between those used under "occupational/controlled" versus "general population/uncontrolled" conditions. Order at ¶ 68. It identifies devices falling within the former category as those designed for use in the workplace, with typically low duty factors and shielding for mobiles, in particular "push to talk" mobiles and portables such as those used in taxicab, business, and public safety operations. Order at ¶¶ 67-8. It contrasts such units with devices designed to be purchased and used primarily by consumers, such as cellular telephones

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<sup>1</sup> Report and Order, ET Docket No. 93-62, 11 FCC Rcd \_\_\_\_ (rel. Aug. 1, 1996) ("Order").

and personal communications devices that frequently have higher duty factors. Id. The former will be subject to the limits applicable to controlled environments, while the latter will be governed by more restrictive exposure criteria appropriate for general population/uncontrolled use devices.

3. AMTA does not request reconsideration of these delineations. The Association accepts that it may be appropriate to adopt different criteria for devices used intermittently by educated users in the workforce and those operated by the general population as wireless substitutes for their wired telephone instruments. AMTA also acknowledges that certain Specialized Mobile Radio ("SMR") systems are developing the capability of competing with cellular and PCS for that general population subscribership. However, as detailed below, the definition used by the Commission to distinguish between such so-called "covered" SMR systems and more traditional SMR operations that serve primarily radio-educated, business customers is inconsistent with the policy delineation defined in the Order and should be reconsidered.

## **II. THE FCC SHOULD ADOPT A REFINED DEFINITION OF COVERED SMR.**

### **A. The Current Rule.**

4. The Order's definition of "covered SMR systems" is consistent with that used in a variety of recent proceedings relating to wireless issues.<sup>2</sup> Covered SMR providers include two classes of SMR licensees: 800 MHz and 900 MHz SMR licensees that hold geographic area licenses and incumbent wide area SMR licensees, defined as licensees who have obtained

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<sup>2</sup> First Report and Order, CC Docket No. 55-116, 11 FCC Rcd \_\_\_\_ (rel. July 2, 1996) ("Telephone Number Portability Order"); First Report and Order, CC Docket No. 94-54, 11 FCC Rcd \_\_\_\_ (rel. July 12, 1996) ("Resale Order"); Report and Order, CC Docket No. 94-102, 11 FCC Rcd \_\_\_\_ (rel. July 26, 1996) ("E911 Order"); Report and Order, CC Docket No. 94-54, 11 FCC Rcd \_\_\_\_ (rel. Aug. 15, 1996) ("Roaming Order").

extended implementation authorizations in the 800 MHz and 900 MHz SMR service, either by waiver or under Section 90.629 of our rules.<sup>3</sup> Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.<sup>4</sup> The FCC has indicated that this definition is intended to exclude local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis.<sup>5</sup>

5. AMTA agrees that SMR systems offering the services described above should not be considered as offering service to the general population in an uncontrolled RF environment. Such systems are not competing with cellular and broadband PCS for a mass market, consumer oriented subscriber base for which the wireless unit is perceived as an extension of, and perhaps ultimately a replacement for, the wired telephone instrument. Instead, these SMR systems typically offer interconnect capability as an ancillary feature to dispatch for particular business or governmental customers that want that option in a single unit.

6. Thus, AMTA is in full agreement with the Commission from a policy perspective. However, the Association does not agree that the FCC's policy determination is reflected in its covered SMR definition. It will encompass a large number of operators that provide a primarily

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<sup>3</sup> Resale Order at ¶ 19.

<sup>4</sup> See 47 C.F.R. § 1.1307(b)(1) at Table 1.

<sup>5</sup> Resale Order at ¶ 19.

dispatch, business rather than consumer oriented, non-cellular-like configuration. A more narrowly tailored definition is required to achieve the Commission's own objectives.

7. As currently drafted, the definition appears to include every SMR providing a voice service with any interconnection capability that holds a geographic, as opposed to site-specific, license, as well as those that are authorized for extended implementation. AMTA is unaware of any licensees that would be excluded because their service is not "real-time", a limitation that has no obvious applicability in this context. As described more fully below, AMTA would have assumed that the term "switched" was intended to limit the definition to systems with in-system switching capability comparable to that in a cellular or PCS system, a limitation that would be fully consistent with the policy underlying this rule since it would evidence sufficient capacity to serve a consumer, rather than business, subscriber base. It does not interpret the term simply to mean that the system is interconnected with the public switched network because that condition is also part of the definition and, in any event, is unnecessary since CMRS systems are, by definition, interconnected.<sup>6</sup> However, that limiting term is included only in the narrative of various Commission decisions, not in the definition in the rules themselves. Thus, it does not have any exclusionary utility.

8. The result is antithetical to the Commission's intention. For example, the FCC recently conducted an auction for already encumbered 900 MHz SMR spectrum in which it granted geographic licenses based on MTAs. Each winner was awarded the right to operate on ten 12.5 kHz channels, or a total of 250 kHz of spectrum, throughout the MTA, except in those areas in which a co-channel incumbent was already authorized to operate. A number of auction

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<sup>6</sup> 47 C.F.R. § 332(d).

participants, and a significant percentage of successful small business bidders, were incumbents seeking to protect their ongoing operations by acquiring the right to the so-called "white space" in the MTA outside their existing operating areas. These parties had no choice except to acquire a geographic license if they wanted to ensure any expansion opportunity on their channels and prevent potential interference from an unrelated co-channel MTA licensee.

9. While their operational appetites might have been for a smaller coverage area, geographic MTA licenses were the only option on the FCC's menu. However, these licensees harbor no illusions about their capacity capabilities vis-a-vis cellular or broadband PCS, and thus their ability to compete for a broad, general population subscribership. By comparison with their 250 kHz of capacity, each cellular licensee has 25 MHz of spectrum and PCS operators will enjoy either 10 or 30 MHz. There is no technology that would enable a licensee with 250 kHz of spectrum to deploy a system that would support the channel reuse and mobile handoff capability that enable cellular and PCS operators to target a consumer oriented, mass market. Yet the definition in this Order would classify such systems as covered SMRs if they offered interconnect capability to even one mobile unit. That result is entirely inconsistent with the FCC's express intention.

10. AMTA anticipates that virtually all future SMR licenses, whether in the 800 MHz, 900 MHz, 220 MHz or other bands, will be awarded by auction. It further assumes that these authorizations will be geographic-based since auctions are manageable only when essentially fungible properties are being sold. It is highly unlikely that applicants, including incumbents like those at 900 MHz, will have a choice between a geographic or some less encompassing type of license. In fact, the FCC is actively considering a proposal whereby lower band 800 MHz

SMR channels could be licensed and even auctioned on a frequency by frequency basis with a resulting Economic Area ("EA") geographic license. The licensees of such systems, if interconnected at all, would fall within the current definition of covered SMRs although they would control only 50 kHz of spectrum over a few counties, and even then excluding areas already covered by incumbents. Again, this would be contrary to the technical distinction articulated in the Order.

11. It is clear that the covered SMR definition inadvertently includes many of the very SMR systems that the FCC would agree typically employ "push to talk" technology and serve a business, rather than consumer, market. AMTA believes that the language refinement suggested below more accurately defines these distinctions, and also promotes the Commission's objective of protecting both workers and the general population from potentially harmful RF exposure.

**B. The Proposed Rule.**

12. AMTA and the Commission are in agreement that only SMRs capable of serving a cellular or PCS-like general population marketplace should be defined as "covered" for purposes of these rules. Therefore, AMTA has endeavored to determine what factors distinguish traditional SMR systems from those seeking to compete in the consumer-oriented, CMRS mass wireless market.

13. The Association has identified one feature that, to the best of AMTA's knowledge, is present in all cellular and cellular-like PCS systems, as well as in SMR systems seeking to compete with them. Unlike traditional, local SMR facilities, systems in each of those categories have an in-network switching facility. It is that facility that enables the system to reuse

frequencies dynamically and thereby develop sufficient capacity to accommodate a mass market subscriber base, and to handoff communications between sites seamlessly without manual subscriber intervention.<sup>7</sup>

14. As noted, supra, the FCC already may have identified this switching capability as the appropriate line of demarcation between those SMR systems they intended to classify as covered, and those that were not to be subject to these rules. However, it failed to include the term switched as a definitional feature in the rules themselves.

15. Attached hereto as Exhibit

A is the Association's proposed revision to the definitions of covered SMR provider and incumbent wide area SMR licensee. Because AMTA recommends use of the phrase "mobile telephone switching facility" in the description of this category, it also has included a definition of that term provided at Bellcore Wireless Interconnection '96.

16. The current covered SMR provider definition does not accurately capture the distinction articulated in the Order between SMR systems that serve an occupational/controlled versus general population/uncontrolled subscriber base. The public interest will not be served if SMR operators de-activate or forego the provision of interconnection because they are unwilling or incapable of satisfying this Commission requirement. Therefore, AMTA urges the FCC to modify its definition as proposed herein.

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<sup>7</sup> AMTA notes that some local SMR systems incorporate a PBX-like "switch"; however, this equipment does not enable features such as frequency re-use or seamless handoff. Such systems, the Association believes, should not be included as covered SMR operations.



**C. An Alternative Solution.**

17. Alternatively, if the Commission is unwilling to adopt the revised language detailed above, AMTA requests that the covered SMR definition be modified to apply only to systems serving twenty thousand (20,000) or more subscribers nationwide. That modification would also be consistent with the FCC's intention to include only those SMR systems that are capable of competing with cellular and PCS systems in the provision of service to the general population. It is not the Association's preferred solution because it is not tailored as precisely to reflect the system distinctions identified by the FCC. However, as described herein, it would be preferable to the current definition.<sup>8</sup>

18. As the Commission has recognized previously, many SMR systems continue to offer a service that is localized, with individual stations providing discrete areas of coverage to primarily business customers within a particular market. A licensee may own multiple facilities, and customers may have the capability of roaming from station to station through a manual selection process, but the service is not "cellular-like". It does not reuse frequencies and does not permit automatic, seamless handoff.

19. These traditional-type SMR systems are inherently limited in the number of subscribers that can be served in any market. Without channel reuse, their capacity is restricted irrespective of the technology they employ. A subscriber count of more than twenty thousand units nationwide does not necessarily indicate that the system has adopted a cellular-like system design since an operator might have multiple, totally independent, heavily loaded, traditional

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<sup>8</sup> The Association notes that the FCC has previously adopted subscriber figures, in the form of wireline "lines", to exempt rural telephone companies from more stringent regulatory requirements in its PCS proceeding.

facilities.<sup>9</sup> Similarly, it does not mean that a mass consumer market is being tapped. However, AMTA believes this cap would allow a very significant number of traditional operators, those the FCC intended to exclude, to be classified as not covered, while retaining covered status for the very largest systems that either currently have or may develop the potential to provide some level of competition for cellular and PCS.

### **III. CONCLUSION.**

20. For the reasons described above, AMTA urges the Commission to refine the definition of "covered SMR" as described herein to reflect more accurately the policy objectives articulated in the Order.

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<sup>9</sup> The Commission should note the newly implemented PCS system in the Baltimore-Washington area is expected to have approximately one hundred thousand (100,000) subscriber units in operation less than a year after service was initiated.

**PETITION FOR RECONSIDERATION**  
**AMERICAN MOBILE TELECOMMUNICATIONS**  
**ASSOCIATION INC.**

**ET DOCKET NO. 93-62**

**EXHIBIT A**

## PROPOSED DEFINITION FOR COVERED SMR SERVICES

Add new definition paragraph to § 20.3

*Mobile Telephone Switching Facility.* An electronic switching system that is used to terminate mobile stations for purposes of interconnection to each other and to trunks interfacing with the public switched network.

Modify definitions - §§20.3 and 20.12

*Incumbent Wide Area SMR Licensees.* Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer ~~real-time~~ two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network.~~

§ 20.12(a)

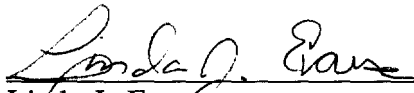
This Section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses (included in Part 90, Subpart S of this chapter) and who offer ~~real-time~~ two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network~~, and Incumbent Wide Area SMR Licensees.

## **CERTIFICATE OF SERVICE**

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 6th day of September, 1996, caused to be mailed a copy of the foregoing Petition for Reconsideration to the following:

- \* Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554
- \* Commissioner James H. Quello  
Federal Communications commission  
1919 M Street, N.W., Room 802  
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- \* Commissioner Rachelle B. Chong  
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- \* Commissioner Susan Ness  
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Linda J. Evans

\*Via Hand Delivery